

<b>Notice of Allowability</b>	Application No.	Applicant(s)
	10/662,352	FRANKEL, MICHAEL Y.
	Examiner Jerry Martin Blevins	Art Unit 2883

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTO-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1.  This communication is responsive to amendment filed May 22, 2006.
2.  The allowed claim(s) is/are 1-17.
3.  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a)  All
  - b)  Some\*
  - c)  None
  1.  Certified copies of the priority documents have been received.
  2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3.  Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4.  A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5.  CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
  - (a)  including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
    - 1)  hereto or 2)  to Paper No./Mail Date \_\_\_\_\_.
  - (b)  including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6.  DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

1.  Notice of References Cited (PTO-892)
2.  Notice of Draftsperson's Patent Drawing Review (PTO-948)
3.  Information Disclosure Statements (PTO-1449 or PTO/SB/08),  
Paper No./Mail Date \_\_\_\_\_
4.  Examiner's Comment Regarding Requirement for Deposit  
of Biological Material
5.  Notice of Informal Patent Application (PTO-152)
6.  Interview Summary (PTO-413),  
Paper No./Mail Date \_\_\_\_\_.
7.  Examiner's Amendment/Comment
8.  Examiner's Statement of Reasons for Allowance
9.  Other \_\_\_\_\_.

## DETAILED ACTION

### ***Election/Restrictions***

Claims 1-17 are allowable. Claim 17, previously withdrawn from consideration as a result of a restriction requirement, requires all the limitations of an allowable claim. Pursuant to the procedures set forth in MPEP § 821.04(a), **the restriction requirement between species 1 and species 2, as set forth in the Office action mailed on July 13, 2005, is hereby withdrawn** and claim 17 is hereby rejoined and fully examined for patentability under 37 CFR 1.104. In view of the withdrawal of the restriction requirement, applicant(s) are advised that if any claim(s) including all the limitations of an allowable claim is presented in a continuation or divisional application, such claims may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application. Once the restriction requirement is withdrawn, the provisions of 35 U.S.C. 121 are no longer applicable. See *In re Ziegler*, 443 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP § 804.01.

### ***Response to Arguments***

Applicant's arguments, see pages 6-14, filed May 22, 2006, with respect to claims 1-16 have been fully considered and are persuasive. The rejection of claims 1-16 has been withdrawn.

***Allowable Subject Matter***

Claims 1-17 are allowed.

The following is an examiner's statement of reasons for allowance:

Regarding claim 1, the prior art, as best exemplified by US Pre Grant Publication to Xiao et al., number 2002/0101636, teaches an optical node apparatus (Figures 3-6) comprising a through path coupler (Figure 6, element 626) having at least first and second outputs (corresponding to output ports 648 and 650), the through path coupler configured to optically connect to an input port (elements 644 and 646) for receiving an input optical signal and configured to provide a first through optical signal on the first output and a second through optical signal on the second output (Figure 6); a first optical filter (652a) for optically connecting to the first output port and configured to filter the first through optical signal; and a selective connector (optical switch 630) configured for enabling selective optical connection to an output of the first optical filter, wherein the second output port is configured to accept a second optical filter (652b) and the selective connector is configured to switch optical connection to an output of the second optical filter without any substantial disruption to an operation of the optical node apparatus (page 5, paragraphs 40 and 41). However, Xiao, either alone or in combination with the prior art, fails to disclose or render obvious that the second output port is initially left unconnected and that the optical node apparatus is reconfigurable while in-service and comprises connections to permit an in-service upgrade from a broadcast architecture to a spectrally blocking architecture, permitting spectral wavelength reuse in subsequent portions of a network; wherein the optical node apparatus comprises connections to permit in-service maintenance; and

wherein the in-service upgrade and the in-service maintenance are made without requiring that the optical node be shut down and without service disruptions.

Claims 2-12 are allowed based on their dependence from allowed base claim 1.

Regarding claim 13, Xiao teaches a fiber optic transmission system (Figures 3-6) comprising: a plurality of transmitters (such as transmitter 624, Figure 6, which is repeated for every dashed rectangle 550 in Figure 5) configured to transmit input signals; a multiplexer (element 302.1, Figure 3) connected to a fiber optic line, the multiplexer configured to multiplex signals from the plurality of transmitters to the fiber optic line (Figure 3); a demultiplexer (element 302.2, Figure 3) connected to the fiber optic line, the demultiplexer configured to demultiplex signals from the fiber optic line (Figure 3); a plurality of receivers (such as receiver 628, Figure 6, which is repeated for every dashed rectangle 550 in Figure 5); and one or more optical add/drop nodes of claim 3 (Figures 3 and 4, elements 304 and Figures 5 and 6, elements 550) placed between the multiplexer and the demultiplexer (Figure 3). However, Xiao, either alone or in combination with the prior art, does not disclose or render obvious that an optical node apparatus within the fiber optic transmission system is reconfigurable while in-service and comprises connections to permit an in-service upgrade from a broadcast architecture to a spectrally blocking architecture, permitting spectral wavelength reuse in subsequent portions of a network; wherein the optical node apparatus comprises connections to permit in-service maintenance; and wherein the in-service upgrade and the in-service maintenance are made without requiring that the optical node be shut down and without service disruptions.

Claims 14-17 are allowed based on their dependence from allowed base claim 13.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jerry Martin Blevins whose telephone number is 571-272-8581. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Frank G. Font can be reached on 571-272-2415. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JMB



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